

Appln No. 10/573,230
Amdt date July 21, 2011
Reply to Office action of March 24, 2011

REMARKS/ARGUMENTS

Claims 5-24 are pending in the application and stand rejected as being unpatentable over Dodman in view of Dal Moro et al. and Rong et al. In addition, claims 7 and 8 are objected to as having improper dependent form, while claims 11, 12, 14, 16, 21, and 22 are objected to for being dependent on an objected-to claim. By this amendment, Applicants have cancelled claims 7 and 8, thereby obviating the claim objections on page 3 of the Office action. Applicants have further amended independent claims 5, 23, and 24 by specifying that the insect-derived pheromone or synthesized pheromone is provided as a "communication disturbing agent," and that the calcined crystalline material for containing the phermone is provided "in a powder form with a particle size of 2 to 20 μm ." Support for the limitation that the phermone is provided as a communication disturbing agent is found in the application at pages 23, 25, and 26, and also at pages 3 and 4. Support for the crystalline material being provided in a powder form, with a particle size of 2 to 20 μm , is found in the paragraph bridging pages 13 and 14 and the paragraph bridging pages 14 and 15 of the application. No new matter has been added. Applicants respectfully traverse the rejections and request reconsideration.

The examiner acknowledges that "Dodman does not teach formulations comprising insect pheromones as claimed in claim 5, 23, 24," and also "does not teach calcination parameters, including times and temperatures, as claimed in claims 5-24." The Examiner cites Dal Moro et al. and Rong et al. as purportedly bridging the gap. In particular, at page 6, the Examiner asserts that one would have been motivated to "produce the pheromone compositions of Dodman with an insect pheromone as taught by DalMoro [sic] et al. . . . because Dodman teaches compositions consisting of pheromone and an inert carrier and that animals as well as insects may be controlled with said pheromones and DalMoro [sic] et al. teach composition comprising the same carriers and insect pheromones." However, the Examiner is mistaken to assert that the pheromones described in Dodman can be used to control insects. In addition, as currently amended, claims 5, 23, and 24 recite that the insect-derived pheromone or synthesized pheromone is provided "as a communication disturbing agent," which is neither taught nor

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suggested by any of the references applied against the claims. Dodman provides no discussion of controlling pests, let alone via a communication-disturbing agent. Equally important, neither Dodman, Dal Moro et al., nor Rong et al. teach the use of a crystalline material in a powder form having a particle size of 2 to 20 μm , as now recited in the currently amended claims. The composition disclosed in Dodman is an animal litter, with a much larger particle size. See Dodman, example 2, column 11, lines 56-58, referring to a "earth" in the size range of about 10 to 140 mesh- which corresponds to 105 to 2,000 μm . This is well outside the range now recited in Applicants' claims (2 to 20 μm).

The cited references would not have motivated a skilled person to provided a calcined powdered substrate, of 2 to 20 μm size, with an insect-derived pheromone as a communication disturbing agent -- i.e., a composition intended to disrupt and thereby control the spread insects. The Examiner has simply selected bits and pieces of the three references and, with the benefit of hindsight, concluded, incorrectly, that the claimed invention would have been obvious. Such an approach is improper. "[F]actfinders should be aware . . . of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." *KSR Int'l. Co. v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007). A "patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *Id.* at 418.

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Accordingly, Applicants submit that claims 5-24 are patentable over the art. A notice of allowance is earnestly requested.

Respectfully submitted,
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